

No. 12198

United States
Court of Appeals

for the Ninth Circuit

STATE OF CALIFORNIA, Department of Employment,

Appellant,

vs.

FRED S. RENAULD & CO., Debtor, and GEORGE
GARDNER, Receiver of the Estate of FRED S.
RENAULD & CO., Debtor,

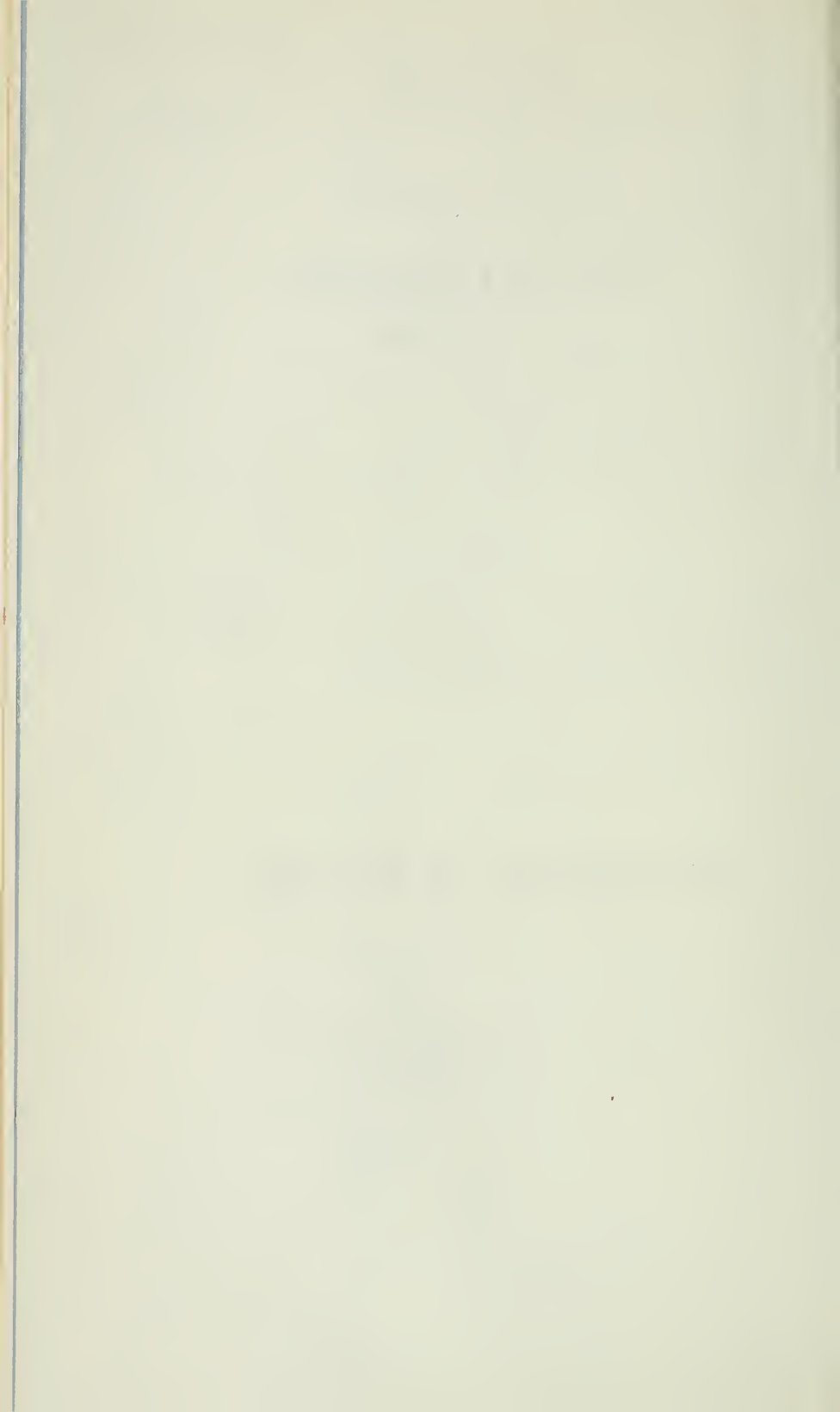
Appellees.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED
APR 14 1949

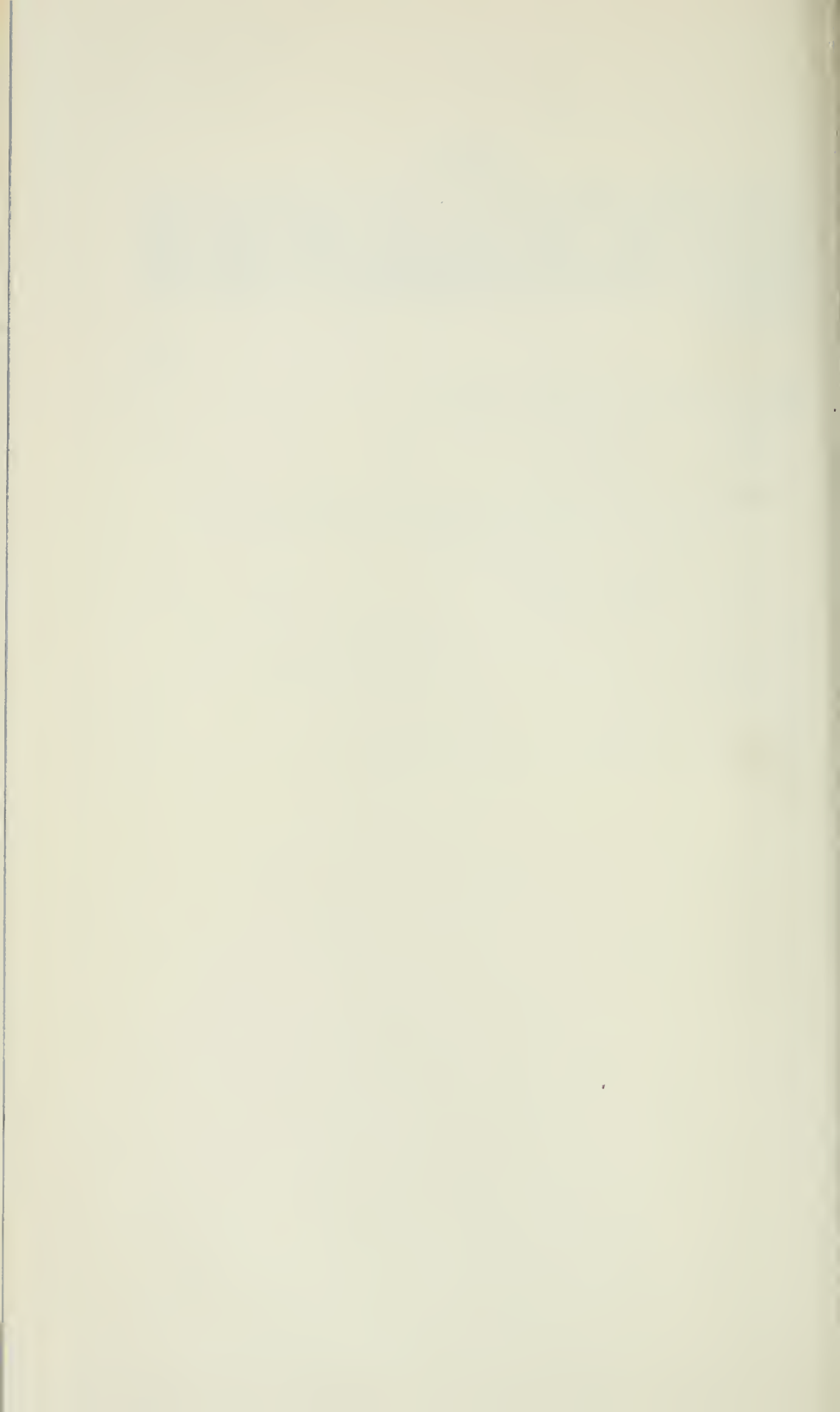
PAUL P. O'BRIEN,
CL



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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Attorney General,

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GEORGE GARDNER,

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Los Angeles 13, Calif.

In the District Court of the United States, Southern
District of California, Central Division

No. 45452-PH

In the Matter of
FRED S. RENAULD & CO., a Corporation,

Debtor.

AGREED STATEMENT ON APPEAL
PURSUANT TO RULE 76 F.R.C.P.

Pursuant to Rule 76, Federal Rules of Civil Procedure providing for an agreed statement of the case, the debtor herein, Fred S. Renauld & Co., Inc., and its counsel, Rupert B. Turnbull, Esq., and the tax claimant-creditor, State of California, Department of Employment, and its counsel, Fred N. Howser, Attorney General of the State of California, and Vincent P. Lafferty, Deputy Attorney General, do hereby mutually agree to the following statement of the case showing how the question involved arose, how it was decided in the United States District Court, and setting forth the facts necessary to decision by the Appellate Court.

The Proceedings

This is a proceeding under Chapter XI of the Bankruptcy Act. An order confirming the debtor's plan of arrangement has been duly entered. The State of California through its Department of Employment filed its claim in the amount of \$1,503.98 interest, for taxes arising under the Unemployment Insurance Act. Objections to the claim were jointly

filed by the debtor and receiver and, after hearing, the Referee allowed the claim except for the amount of \$454.99.

The amount disallowed represents the tax claimed as due from the debtor based upon wages paid by it to certain employees after its incorporation on July 1, 1946. These employees had (prior to incorporation) been employees of a partnership consisting of Fred S. and Naomi Renauld, and the partnership had, during the year 1946, paid tax on the first \$3,000.00 in wages paid to each employee.

Upon incorporation, the debtor considered that no further tax need be paid upon wages to employees who had during the partnership operations (and during the calendar year) received \$3,000.00. The tax claimant, State of California, assessed the tax upon the theory and contention that upon incorporation the debtor became a new employer and was required to pay tax measured by the first \$3,000.00 paid to any of its employees regardless of tax paid on any amount paid by the predecessor partnership to the same employees.

The Referee ruled that in the calendar year 1946, the partnership and the corporation were one "employer" under the California Unemployment Insurance Act and that the corporation was not required to start anew the \$3,000.00 limitation upon incorporation on July 1, 1946. This ruling was predicated upon the following:

Necessary Facts Involved

1. On July 1, 1946, the debtor corporation took over a business which was at the time operated

by a partnership composed of Fred S. Renauld and his wife.

2. That the consideration for the transfer of the *stock* from the partnership to the corporation was the issuance of all of the stock of the corporation to the said Fred S. Renauld, his wife having directed that her share of such stock be issued to him under an express agreement between them that the stock would be their community property;

3. That there was no change in the type of the business or the place of business after it was transferred to the corporation and that the actual management of the business was conducted by the corporation through and by its sole stockholder Fred S. Renauld in the same manner as it had been conducted during the partnership operations;

4. That the same employees, in general, performed services for the corporation as performed services for the partnership; that the taxes both before and after July 1, 1946, all relate to the calendar year of 1946;

5. That the reserve account of the partnership with the California Department of Employment was transferred to the corporation and that the rate of contribution or merit rating of the partnership with the said Department was assigned to the corporation;

6. That in the calendar year 1946 the employment of the persons who had worked for the partnership and who continued to work for the corporation was considered as one employment by the corporation;

7. That the corporation had taken the position

that when any one of its employees had been paid the sum of \$3,000.00 as an employee of the business here involved in the calendar year 1946, either before or after the corporation took over the said business from the said partnership on the first day of July of such year, that then and in that event, the corporation was not liable for contributions under the California Unemployment Insurance Act on any further amounts paid to such employee in excess of such sum of \$3,000.00 in said calendar year;

8. That the California Department of Employment took the position that the corporation was liable for contributions under the California Unemployment Insurance Act on the whole of the first \$3,000.00 paid by it to any one of its employees in the calendar year of 1946 and subsequent to the first day of July of such year, notwithstanding the fact that such employee had been paid the whole or part of such sum of \$3,000.00 as an employee of the business here involved in such calendar year and before the corporation took over the said business from the said partnership on the first day of July of such year;

9. That the California Department of Employment, in its claim here involved, had included the sum of \$454.99, which it asserted was owing by the corporation because of the fact that it had not paid contributions under the California Unemployment Insurance Act on the whole of the first \$3,000.00 which it had paid to each of its employees after they became employees of the corporation on July 1, 1946.

The State of California petitioned for review of the Referee's order, briefs were submitted and considered and arguments heard in the United States District Court which adopted the Findings of Fact of the Referee as its own and issued the following Order:

In the District Court of the United States, Southern
District of California, Central Division

No. 45452-PH

In the Matter of

FRED S. RENAULD & CO., a Corporation,

Debtor.

ORDER

The Petition of the tax claimant, State of California, Department of Employment, for Review of the Order of Benno M. Brink, Referee in Bankruptcy, dated September 8, 1948, denying in part the claim of the petitioner for taxes having come on for hearing before the District Court of the United States, Southern District, Central Division, Honorable Peirson M. Hall, Judge presiding, on December 6, 1948, the debtor, Fred S. Renauld & Co., Inc., being represented by Rupert B. Turnbull, Esq., counsel for the debtor, and the petitioner being represented by Fred N. Howser, Attorney General of the State of California by Vincent P. Lafferty, Deputy Attorney General, and the Points and Authorities of both the petitioner and debtor having been submitted and considered and arguments having been heard and the court be-

ing fully advised in the premises, and written Findings of Fact and Conclusions of Law having been made herein, it is hereby

Ordered, Adjudged and Decreed, that the claim of the Department of Employment of the State of California be allowed only in the sum of \$1,048.99, and no more, and that the portion of its claim in the sum of \$454.99 be and the same is disallowed and denied, and that the total claim of the Department of Employment of the State of California be and hereby is allowed in the sum of \$1,048.99 as a prior tax claim and to be paid as such.

PEIRSON M. HALL,

Judge, United States District
Court.

Dated: January 14, 1949.

From this Order of the United States District Court the State of California filed the following Notice of Appeal:

No. 45452-PH

In the Matter of
FRED S. RENAULD & CO., a Corporation,

Debtor.

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS

Notice is hereby given that the State of California, Department of Employment, tax claimant in the within proceedings, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from

the Order of the United States District Court, Southern District of California, Central Division, and of Honorable Peirson M. Hall, Judge thereof, denying and disallowing in part the claim of the said Department, entered in this action on January 17, 1949.

FRED N. HOWSER,
Attorney General.

CHARLES W. JOHNSON,
Deputy Attorney General.

WILLIAM L. SHAW,
Deputy Attorney General.

VINCENT P. LAFFERTY,
Deputy Attorney General.

By /s/ VINCENT P. LAFFERTY,
Attorneys for Tax Claimant, 400 Plaza Building,
Sacramento 14, California, 1100 South Flower
Street, Los Angeles 15, California.

Filed: January 24, 1949.

The Question Involved

There is no dispute as to the facts. But two questions are involved in the appeal, to wit:

Point I.

“Is a corporation which succeeds to a partnership required to pay unemployment insurance contributions on the first \$3,000.00 of wages paid by the corporation, when the sole change in the busi-

ness is one of legal entity and when in the same calendar year, the predecessor partnership had already paid unemployment insurance contributions on the first \$3,000.00 paid to any one worker?"

Point II.

Do the decisions of the Appellate Department of the Superior Court of San Francisco, on review from judgments of the Municipal Court, being decisions on the California Employment Tax and its application, bind on the Federal Court as to the California Law?

Points Relied Upon by Appellant

In support of its position that the debtor is required to pay tax on the first \$3,000.00 in wages paid by it regardless of that limitation on what is considered as taxable wages having been reached by the predecessor partnership the State of California relies on the following points:

(1) That the corporation was a new "employing unit" and a new and different "employer" as defined by the Unemployment Insurance Act and that the pre-existing partnership cannot be considered together with the corporation, to constitute but one "employer" as found by the court.

Unemployment Insurance Act (3 Deering's General Laws Act 8780D) Sections 9, 8.5, 11, 37 and 44.2(B).

(2) That as a new "employer" the debtor corporation was required to pay tax on the first \$3,000.00 in wages paid by it to any worker regard-

less of wages paid to the worker by the partnership. (ibid.)

The above statement is agreed to.

FRED N. HOWSER,
Attorney General.

CHARLES W. JOHNSON,
Deputy Attorney General.

WILLIAM L. SHAW,
Deputy Attorney General.

VINCENT P. LAFFERTY,
Deputy Attorney General.

By /s/ VINCENT P. LAFFERTY,
Attorneys for Tax Claimant, State of California,
Department of Employment.

/s/ RUPERT B. TURNBULL,
Counsel for Debtor.

/s/ GEORGE GARDNER,
Receiver.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 24, 1949.

United States District Court, Southern District of
California, Central Division

No. 45452-PH—Bkey.

In the Matter of

FRED S. RENAULD & CO., a Corporation,

Debtor.

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 10, inclusive, contain the original Agreed Statement on Appeal Pursuant to Rule 76 F.R.C.P. which constitutes the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amounted to \$1.60 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 28th day of February, A.D. 1949.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12198. United States Court of Appeals for the Ninth Circuit. State of California, Department of Employment, Appellant, vs. Fred S. Renauld & Co., Debtor, and George Gardner, Receiver of the Estate of Fred S. Renauld & Co., Debtor, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 1, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.